

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

PATRICK GERMAIN

No. 16 CR 495

Judge Joan Humphrey Lefkow

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant PATRICK GERMAIN, and his attorney, THOMAS M. LEINENWEBER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

**Charges in This Case**

2. The information in this case charges defendant with: (1) knowingly and fraudulently attempting to export merchandise, articles, and objects contrary to the laws and regulations of the United States, in violation of Title 18, United States Code, Section 554(a) (Count One); and (2) knowingly and willfully delivering to a common carrier, for transportation and shipment in interstate and foreign commerce, a container in which there were firearms and ammunition without written notice that such firearms and ammunition were being transported and shipped, in violation of Title 18, United States Code, Sections 922(e) and 924(a)(1)(D) (Count Two).

3. Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the information: Count One, which charges defendant with knowingly and fraudulently attempting to export merchandise, articles, and objects contrary to the laws and regulations of the United States, in violation of Title 18, United States Code, Section 554(a).

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning no later than on or about June 1, 2016, and continuing through on or about June 24, 2016, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant knowingly and fraudulently attempted to export and send, from the United States to Haiti, merchandise, articles, and objects, namely, firearms and ammunition, contrary to the laws and regulations of the United States, namely Title 18 United States Code, Section 922(e), all in violation of Title 18 United States Code, Section 554(a).

Specifically, in May 2016, defendant traveled from Haiti to Illinois to purchase vehicles, firearms, and ammunition, which he intended to have transported and shipped from Illinois to Florida, and, ultimately, from Florida to Haiti. Based on the federal forms he filled out to purchase the firearms described below, along with his prior shipping experience, defendant was aware that if he used a common carrier to transport firearms and ammunition from Illinois to Florida, or from the United States to Haiti, he was required to provide the carrier with written notice that such items were being transported or shipped.

In early June 2016, defendant purchased approximately 26 firearms and ammunition from dealers located in Illinois. Defendant also purchased three vehicles, including a red 2002 Ford E350 cargo van, which he parked outside of his residence in Evanston, Illinois. Defendant stored the firearms and ammunition inside the residence, and built a wooden container with a concealed, hollow space and wooden lid, using approximately 25 sheets of half-inch plywood and strong, thick nails. Defendant intended to conceal the firearms and ammunition in the container, which he planned to ship to Haiti.

Defendant placed the ammunition and 22 of the firearms inside the container, namely, the following firearms: nine Smith & Wesson, Model M&P, 9mm pistols; five Hawk, Model 981R, 12 gauge shotguns; three Smith & Wesson, Model SD9VE, 9mm pistols; two Smith & Wesson, Model FNX, .40 caliber pistols; one Bersa S.A., Model

Thunder 380, .380 caliber pistol; one Ruger, Model LC9S, 9mm pistol; and one Palmetto State Armory, Model PA-15, multiple caliber rifle.

Defendant loaded the container in the back of the cargo van and placed several large furniture items and clothing on top of and around the container. By doing this, defendant ensured that the container's contents, namely, the firearms and ammunition, were concealed and would not be discovered by any of common carrier employees, customs or government officials in the United States or Haiti, or any other individuals whom defendant feared might steal the firearms and ammunition, during transit from Illinois to Haiti.

On June 13, 2016, in Evanston, defendant delivered the cargo van and his two other vehicles to SDM Transport Inc., a common carrier, who defendant paid to transport and ship the vehicles to Seacoast Shipping, a shipping company, located in Miami, Florida. When asked by an SDM Transport driver about why the cargo van appeared to be overweight, defendant represented to the driver that the added weight was due to furniture in the backseat and intentionally made no mention of the firearms and ammunition that were concealed inside the container and also weighing the van down. At no time did defendant inform SDM Transport that the cargo van contained firearms and ammunition and defendant knew that it was unlawful to fail to disclose the firearms and ammunition to the common carrier.

On June 14, 2016, defendant traveled to Miami and notified Seacoast Shipping representatives that SDM Transport was transporting three of his vehicles from

Illinois to Seacoast Shipping in Miami. Defendant then arranged for Seacoast Shipping to transport and ship the three vehicles, including the cargo van containing the firearms and ammunition, from Florida to Haiti. Defendant, among other things, filled out Seacoast Shipping documents and paperwork, but did not notify Seacoast Shipping that any of the vehicles contained firearms or ammunition. By doing so, defendant misled Seacoast Shipping into understanding that they were only transporting three vehicles and miscellaneous furniture and clothing from the United States to Haiti on defendant's behalf. Defendant then returned to Haiti to await delivery of the vehicles, firearms, and ammunition.

On June 16, 2016, SDM Transport delivered the three vehicles to Seacoast Shipping. Before the cargo van, as well as the firearms and ammunition contained therein, could be transported and shipped to Haiti, it was seized by law enforcement agents.

Neither SDM Transport, Seacoast Shipping, or any other affiliated party involved in shipping or transporting the firearms and ammunition referenced above was, at any time in 2016 or before, a licensed importer, manufacturer, dealer or collector of firearms as defined under Title 18, United States Code, Section 921(a).

#### **Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 10 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

### **Sentencing Guidelines Calculations**

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2016 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 26, pursuant to Guideline § 2M5.2(a)(1), because the offense involved more than two non-fully automatic small arms weapons.

ii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

iii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting

the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is therefore I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 23, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 46 to 57 months' imprisonment, in addition to any supervised release and fine the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing,

and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

#### **Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

14. Defendant acknowledges that, in 2016, administrative forfeiture proceedings were commenced against certain property, including the cargo van, firearms, ammunition, and other recovered firearm accessories by United States Customs and Border Protection in administrative case number 2016520100063101. By signing this plea agreement, defendant acknowledges that he had notice of the administrative forfeiture proceeding, relinquishes any right, title, and interest he may have had in this property, withdraws any previously filed claims, and understands that an administrative decree of forfeiture has been entered, or will be entered, thereby extinguishing any claim he may have had in the seized property.

15. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining count of the information as to defendant.

### **Acknowledgments and Waivers Regarding Plea of Guilty**

#### **Nature of Agreement**

16. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 16 CR 495.

17. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

18. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charges prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the information separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

c. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

19. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

20. Defendant understands that he has the right to be prosecuted for any criminal offense in the district or districts where the offense was committed. By signing this Agreement, defendant knowingly consents to prosecution of the charges against him in the Northern District of Illinois and waives any objection to the venue of this prosecution.

**Presentence Investigation Report/Post-Sentence Supervision**

21. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

22. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of

justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

23. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

#### **Other Terms**

24. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

25. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

## Conclusion

26. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

27. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

28. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

29. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

30. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

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JOHN R. LAUSCH, JR.  
United States Attorney

\_\_\_\_\_  
PATRICK GERMAIN  
Defendant

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WILLIAM DUNNE  
Assistant U.S. Attorney

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THOMAS M. LEINENWEBER  
Attorney for Defendant